

Response to Request for Additional Information regarding HB 236:

(1) Representative Reinhart asked to provide additional information for how credit reporting agencies (CRAs) treat deferred sentences, specifically where the conviction is not removed from a credit report in accordance with the deferred sentence.

As I testified to during the hearing, under both Montana law and the Fair Credit Reporting Act (FCRA, 15 U.S.C. § 1681) arrests and indictments stay on a credit report for 7 years regardless of conviction. Some of our members do not consider deferred sentences to be criminal records that are convictions and are therefore subject to a 7-year obsolescence period. Some states have a suspended imposition of sentence such as Missouri in which once the community service or probation is served the criminal record is no longer publically available so from a CRA perspective, the record has to be removed completely from the database. Another member said that it considers deferred sentences as automatically expunged after the sentence fulfilled.

Montana is one of those states in which a deferred imposition of sentence that results in a dismissal of charge causes all records and data relating to the charge to be considered confidential information, and public access to the information may be obtained only by district court order upon good cause shown.

It is also important to note that under the FCRA, a consumer is entitled to receive one free credit report once per year per nationwide CRA (Equifax, Experian, and TransUnion). The website for free report access is www.annualcreditreport.com. Any errors can be disputed with the CRA and most disputes are resolved in two weeks, but cannot take more than 30 days (or 45 in certain cases). It is good practice for individuals to monitor their credit.

(2) Representative Furey requested additional information on how CRAs deal with plea agreements.

As stated above, under both the FCRA and Montana law, arrests and indictments stay on a credit report for 7 years. If there is a plea deal, there is a conviction and again that information may stay on a consumer report forever. The CRAs would report the conviction and not the charge. So, for example, if a CFO was arrested for embezzlement and plead that down to a lesser included offense, CRAs would carry that lesser offense as that was the one that resulted in the conviction. The statute that Representative Greef seeks to amend currently provides that convictions are only reported on credit reports for 7 years. This statute was enacted in the 1970s, prior to enactment of the FCRA in 1996, but FCRA controls because the Montana statute directly conflicts with a FCRA provision. HB 236 is amending the Montana statute to report convictions consistently with federal law. I double-checked the exceptions to the length of time certain information may appear on a credit report and none of those exceptions would have applied in the circumstances referred to by Representative Furey.